

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

and

SIERRA CLUB,

Intervenor-Plaintiff,

v.

DTE ENERGY COMPANY AND
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven
Whalen

**DEFENDANTS' MOTION FOR RECONSIDERATION
OR CLARIFICATION OF THE COURT'S ORDER
GRANTING SIERRA CLUB'S MOTION FOR LEAVE
TO FILE AN AMENDED COMPLAINT**

Pursuant to Local Rule 7.1(h), Defendants DTE Energy Company and Detroit Edison Company (collectively, DTE) respectfully file this motion for reconsideration or clarification of the Court's order granting Intervenor-Plaintiff Sierra Club's motion for leave to file an amended complaint. ECF No. 202 (the April 9 Order).¹

¹ Pursuant to Local Rule 7.1(a), DTE has conferred with counsel for the Government and Sierra Club regarding this motion. Both the Government and Sierra Club take no position on the motion prior to its filing.

In the April 9 Order, the Court grants both the Government and Sierra Club leave to file amended complaints, because “defendants consent to the filing of the amended complaints.” *Id.* This is true with respect to the Government’s motion. DTE opposed the Government’s motion only to the extent it would delay resolution of the claims respecting the Spring 2010 projects at Monroe Unit 2. The Court’s March 3, 2014 Order granting DTE summary judgment with respect those claims satisfies that condition, so DTE does not oppose the Government’s proposed amendment.

But DTE did oppose, in part, Sierra Club’s motion for leave to amend. *See* ECF No. 189. Sierra Club seeks to add claims beyond those the Government has added and thus would expand the case beyond the bounds set by the parties. As explained in DTE’s opposition, this new claim relates to projects and a power plant that are different from the projects and power plants at issue in the claims the Government added in its amended complaint. Adding this claim thus would expand discovery, prolong trial and ultimately impair DTE’s interest in the efficient resolution of this case. Moreover, the Court lacks jurisdiction to hear that claim, because it was not preceded by a Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(a)(1). *See id.* at 7 n.2. For this reason, DTE asked the Court to grant Sierra Club’s motion only as to claims already asserted by the Government. *See id.*

The Court’s April 9 Order seems to indicate that Sierra Club has been granted leave to file its Amended Complaint without limitation based on DTE’s consent. If this reading of the Court’s order is correct, then DTE respectfully submits that this qualifies as a “palpable defect,” the correction of which “will result in a different disposition” of Sierra Club’s motion, based on the reasons identified in DTE’s

Response to Sierra Club's Motion. Loc. R. 7.1(h)(3). Conversely, the Court's April 9 Order might be read to indicate that Sierra Club's motion is granted only insofar as DTE consents to it. If this reading is correct, then DTE requests that the Court clarify its order accordingly.

Respectfully submitted this 11th day of April, 2014.

Matthew J. Lund (P48632)
Suite 1800
4000 Town Center
Southfield, Michigan 48075-1505
lundm@pepperlaw.com
(248) 359-7300

Michael J. Solo (P57092)
Office of the General Counsel
DTE Energy, One Energy Plaza
Detroit, Michigan 48226
solom@dteenergy.com
(313) 235-9512

By: /s/ F. William Brownell

F. William Brownell
Mark B. Bierbower
Makram B. Jaber
Hunton & Williams LLP
2200 Pennsylvania Ave., N.W.
Washington, D.C. 20037
bbrownell@hunton.com
mbierbower@hunton.com
mjaber@hunton.com
(202) 955-1500

Brent A. Rosser
Hunton & Williams LLP
Bank of America Plaza, Suite 3500
101 South Tryon Street
Charlotte, North Carolina 28280
brosser@hunton.com
(704) 378-4700

Harry M. Johnson, III
George P. Sibley, III
Hunton & Williams LLP
951 E. Byrd Street
Richmond, Virginia 23219
pjohnson@hunton.com
gsibley@hunton.com
(804) 788-8200

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2014, the foregoing **DEFENDANTS' MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURT'S ORDER GRANTING SIERRA CLUB'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT** was served electronically only on counsel of record through the Court's CM/ECF system.

/s/ George P. Sibley, III